

Zoning Board of Adjustment & Appeals

January 30, 2015

To: Mrs. Betty Fletcher Chair, Zoning Board of Adjustment & Appeals and Members of the Zoning Board of Adjustment and Appeals

Case Number: 1107

Location of Subject Property

The subject property is Lot 46, *Rainbow Mountain Heights Subdivision, Phase 7* which is located west of Slaughter Road and east of Carter Road.

Background

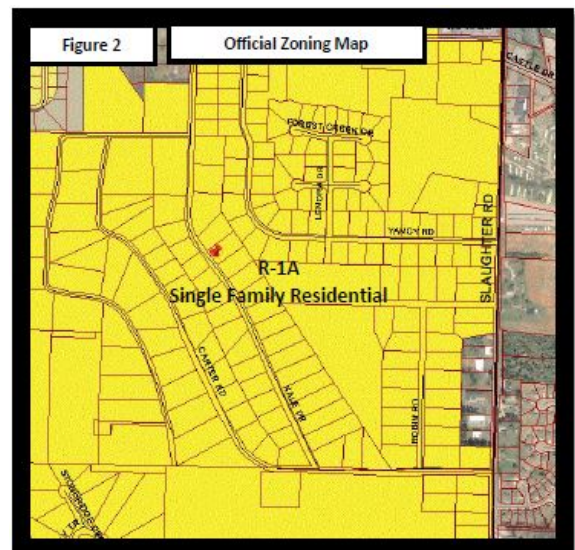
Rainbow Mountain Heights Subdivision, Phase 7 which was platted in 1973, is zoned R-1A, *Low Density Residential* and includes 48 large lots ranging in size from one-half (1/2) acre to over one (1) acre.

The subject property measures approximately 28,619 sq. ft., slightly over half an acre.

City of Madison Zoning Ordinance Section 4-1-3, Dimensional Requirements, provides that main and accessory structures, with a roof impervious to rain, shall not cover more than twenty-five (25) percent of lot area in the R-1A Zoning District. Currently, 0.09% of Lot 46 is covered.

Applicant's Request

The applicant is requesting a variance to Section 4-1-3(2) of the City of Madison Zoning Ordinance to reduce the fifteen (15) foot side yard setback to not less than six (6) feet. Applicant is requesting the



variance in order to construct additional living and storage space.

ZBA Review Criteria & Staff Analysis

In order for the Zoning Board of Adjustment and Appeals to grant a variance, the applicant must establish a hardship and demonstrate the request satisfies the additional provisions in Section 10-5-3 of the Zoning Ordinance.

Planning Staff is also charged with reviewing each request made to the board and following the same criteria in making a recommendation. Staff has provided suggested findings (in italics) for each criteria, to be reviewed and accepted, modified, or rejected by the Zoning Board, after public comment and hearing directly from the applicant.

- a. The granting of the variance shall be in harmony with the general purpose and intent of the regulations imposed by this Ordinance on the district in which it is located and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.**

The addition of living and storage space is commonly seen in all residential zoning districts and is permitted, by right, in the R-1A District.

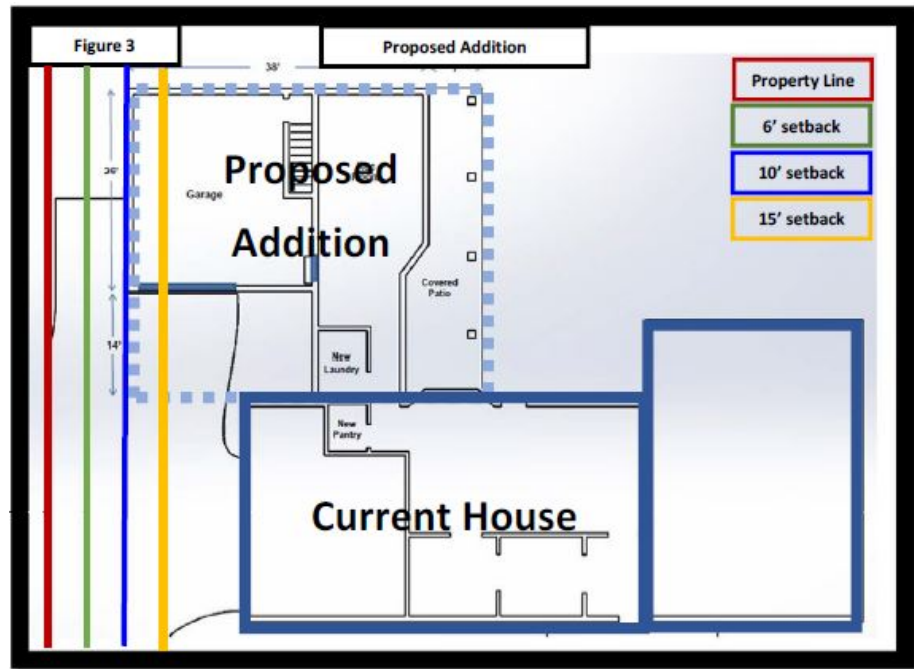
- b. The granting of the variance will not permit the establishment of any use which is not permitted in the district.**

The use of the subject property will not be changed by the proposed addition. It is now, and will continue to be, a single-family dwelling.

- c. There must be proof of unique circumstances or conditions fully described in the findings and applicable to the land or buildings for which the variance is sought, such circumstances or conditions being peculiar to such land or buildings and generally having no application to land or buildings in the district, and which circumstances or conditions are such that the strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building.**

Rainbow Mountain Heights Subdivision, Phase 7, was platted in 1973, well before the applicant purchased the subject property. As was the trend at that time - lower density, larger lots with a lower percentage (25%) of lot coverage - a minimum of thirty (30) feet between houses was required. Current subdivision development trends for higher density, smaller lots and higher percentages (33%-35%) of lot coverage allow for sixteen (16) feet of separation between houses. There is approximately sixty (60) feet of separation between the applicant's house and that of the adjoining property to the north, the side of the proposed addition. Reducing the side yard setback will still provide approximately forty (40) feet of separation, well above requirements in many residential areas.

Further, the housing trend thirty-five (35) years ago, when the applicant's house was built, was for modest size, ranch-style houses, and averaging 2,500 sq. ft. According to the Madison County Tax Assessor's Office, the principal structure on the subject property measures 2,701 sq. ft., which includes the garage and any covered porches. The proposed addition will add approximately 1,600 square feet of living and storage space that will cover approximately fifteen (15) percent of the lot, still well below the maximum allowable twenty-five (25) percent, in the R-1A District.



- d. **There must be proof of unnecessary hardship.** It is not sufficient proof of hardship to show that greater profit would result if the variance were granted. Furthermore, the hardship complained of cannot be self-created nor can it be established on this basis by one who purchases with or without knowledge of the restrictions. It must result from the application of this Ordinance; it must be suffered directly by the property in question; and evidence of other variances or non-conformities granted under similar circumstances shall not be considered.

Planning Staff recognizes the growing trend for redevelopment of houses in older subdivisions. Many families enjoy the amenities found in these areas including larger lots with mature trees, affordable housing costs and built-to-last, quality construction. One well maintained/renovated home can have a snowball effect on an entire neighborhood, encouraging further redevelopment.

The US Census Bureau projects that the number of 65 and over "baby-boomers" will increase 40 percent by the year 2020. The growth in this older population will underpin strong demand for retrofits to existing homes to enable these households to age in place. Meanwhile, members of subsequent generations are entering their peak remodeling years and will continue to support market growth in the home improvement market in the 2020s and beyond. This data supports the City's need to address the zoning restrictions that inhibit redevelopment.

Increased property values, a reduction in the number of Code Enforcement complaints as well as aesthetic enhancement are some of the undeniable benefits of rehabilitating older subdivisions. Staff understands the need to provide supportive guidelines and regulations currently lacking in the Zoning Ordinance and is actively working toward that end.



- e. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as requested from the Zoning Board of Adjustment is the minimum variance that will accomplish this purpose.**

The subject lot is large enough to accommodate a house with a footprint of 7,155 sq. ft., without exceeding the maximum percentage of lot coverage. The proposed addition is not an unreasonable size and will allow the applicant and his growing family to remain in a house and neighborhood they love. The applicant's preliminary plan would require an approximate five (5) foot reduction in the side yard setback – from fifteen (15) feet to ten (10) feet. However, granting a reduction to not less than six (6) feet, will provide a bit of leeway, in the event the preliminary plan does not scale as accurately as the final.

- f. That the proposed variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the adjacent neighborhood.**

A reduction in the side yard setback will not adversely affect adjacent properties, utilities, traffic flow nor cause an increase in fire danger. There will be approximately forty (40) feet of open space between houses, twice the amount in other zoning districts.

- g. That the granting of the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same district.**

Many residentially zoned areas allow a principal structure, or an addition to a principal structure, to be placed eight (8) feet from the property line. The required side setback in the R-1A District is fifteen (15) feet. Accessory structures, i.e. detached garages, may be placed one (1) foot off the utility and drainage easement in all residential districts or, for the subject lot, six (6) feet from the property line.

Staff Recommendation

Staff is aware that this application does not prove an unnecessary hardship, as historically defined. However, recognizing that the Zoning Ordinance does not provide adequate regulations for the

redevelopment of older subdivision, Staff believes, in this case, the Zoning Ordinance itself places a hardship on the applicant. *City of Madison Zoning Ordinance Section 10-1(5), Zoning Board of Adjustment: Duties and Powers*, states, in essence, that the Board of Adjustment may authorize a variance that *will not be contrary to the public interest and so that the spirit of the Zoning Ordinance shall be observed*. Staff believes the approval of applicant's request will not only protect the public interest but will uphold the intended spirit of the regulations within the Zoning Ordinance.